CHONG MEE HUP KEE SDN BHD

v.

MAHKAMAH PERUSAHAAN MALAYSIA & ANOR

HIGH COURT MALAYA, IPOH
VT SINGHAM J
[JUDICIAL REVIEW NO: 25-20-2005]
18 JULY 2008

ADMINISTRATIVE LAW: *Judicial review - Certiorari, application for - Setting aside or quashing award of Industrial Court - Constructive dismissal - Compensation in lieu of reinstatement - Reimbursement - Whether dismissal without just cause and excuse - Whether interference with decision justified*

LABOUR LAW: *Industrial Court - Award - Certiorari, application for - Setting aside or quashing award of Industrial Court - Constructive dismissal - Compensation in lieu of reinstatement - Reimbursement - Whether dismissal without just cause and excuse - Whether interference with decision justified*

This was an application by the applicant/company for an order of *certiorari* to set aside or quash an Industrial Court award in favour of the second respondent/employee. The employee, the Production Manager of the company at the material time, was initially dismissed by the company through a letter dated 23 May 2001. Following a complaint to the Industrial Relations Department by the employee, he was reinstated to his position with all benefits intact. However, on 22 August 2001, the employee claimed that he was constructively dismissed and sent a letter to the company to that effect, citing the many complaints which caused him to treat himself as such. The employee consequently applied to the Industrial Court to reinstate him to his former position without any loss of wages, allowances, service seniority, privileges or benefits of any kind or, in the alternative, to declare that he had been constructively dismissed. The company denied all the employee's complaints and contested the claim at the Industrial Court on the ground that the employee had left the job voluntarily. The Industrial Court Chairman found that the employee had proved his claim of constructive dismissal and that it was without just cause or excuse. She, however, found that reinstatement was not the proper remedy and instead awarded compensation in the sum of RM27,333 *in lieu* of reinstatement,

backwages for 24 months amounting to RM48,000 and RM513.40 as reimbursement for food allowance, petrol and medical fees for the month of August 2001. There were three issues in this application requiring consideration: (i) whether there was constructive dismissal; (ii) whether a break in employment between 1 until 15 November 1995 (two weeks) by the employee should be taken into account in awarding compensation *in lieu* of reinstatement, and if the compensation was excessive; and (iii) whether the employee was entitled to be awarded the sum of RM513.40 as reimbursement for food allowance, petrol and medical fees for the month of August 2001.

Held (dismissing the application):

(1) The treatment accorded towards the employee by the company after it had agreed to reinstate him to his original position without any loss of benefits or seniority, on the facts of this case, was so deplorable that it must, upon being judged reasonably and objectively, necessarily be considered constructive dismissal since no employee could be expected to tolerate it. In fact, it was a wrongful act without just cause and excuse. Accordingly, the employee had correctly asserted his right to treat himself as having been discharged or dismissed without just cause or excuse since the company had conducted themselves in a manner calculated to seriously damage the relationship of confidence and trust between the company and the employee. (paras 12 & 13)

(2) The Chairman, having considered that the employee had left employment on 1 November 1995 and rejoined on 16 November 1995, expressly stated that she was not taking this lapse into account due to its brevity and awarded compensation for the period of 13 years and eight months *ie*, from the date the employee was employed in November 1987 till the time of the constructive dismissal. This showed that the Chairman had taken into account the break in employment by the employee. Therefore, she had correctly assessed the compensation on the materials placed before her. (para 14)

(2a) The award for compensation *in lieu* of reinstatement by the Chairman was not manifestly excessive or unreasonable when taking into account the background facts and substantive merits of the case to justify any interference by this court.

She, after considering all the issues most carefully and thoroughly, had correctly found that the employee had been constructively dismissed and that the dismissal was without just cause or excuse, and she did not exceed her statutory powers. In fact, both the findings were so interwoven that the finding of constructive dismissal must necessarily also lead to the finding that the dismissal was without just cause or excuse for the employee to succeed in the matter before the Industrial Court. There was no justification for a 50% adjustment on the award as submitted by the company that, if accepted, would be arbitrary and without any justification. (para 19)

(3) The award of RM513.40, being reimbursement for food allowance, petrol and medical fees, was justified as the employee was entitled to receive the same during his employment. (para 20)

(4) On the totality of the evidence and upon reviewing the manner in which the Chairman had reached her decision, there was no misdirection or misapplication of the law to the facts to justify any interference by this court. (para 23)

Case(s) referred to:

Ang Beng Teik v. Pan Global Textiles Bhd, Penang [1996] 4 CLJ 313 CA ***(foll)***

Bayer (M) Sdn Bhd v. Anwar Abd Rahim [1994] 1 ILR 473 ***(foll)***

Harpers Trading (M) Sdn Bhd v. National Union of Commerce Workers [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 SC ***(foll)***

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 FC ***(refd)***

KFC Technical Services Sdn Bhd v. The Industrial Court of Malaysia & Anor [1992] 1 CLJ 437; [1992] 2 CLJ (Rep) 634 HC ***(refd)***

Koperasi Serbaguna Sanya Sdn Bhd (Sabah) v. Dr James Alfred (Sabah) & Anor [2000] 3 CLJ 758 CA ***(foll)***

Lamb v. Evans [1893] 1 Ch 218 ***(foll)***

Lewis v. Motorworld Garages Ltd [1985] IRLR 465 ***(foll)***

Mak Weng Kit v. Reed Exhibitions Sdn Bhd [2000] 5 CLJ 253 HC ***(refd)***

National Union of Plantations Workers v. Kumpulan Jerai Sdn Bhd [2002] AMR 1387 ***(refd)***

Northumberland Compensation Appeal Tribunal Ex Parte Saw [1952] 1 All ER 122 ***(refd)***

Pahang Lim Seong Motor Ltd & Anor v. Cheong Swee Khai & Anor [1970] 2 MLJ 237 ***(foll)***

Pang Ah Chee (MW) v. Chong Kwee Sang [1985] 2 CLJ 221; [1985] CLJ (Rep) 236 FC ***(refd)***

A *Puhlhofer v. Hillingdon LBC [1986] AC 484* ***(refd)***
Robinson v. Crompton Parkinson [1978] IRLR 61 ***(foll)***
Quah Swee Koon v. Sime Darby Bhd [2001] 1 CLJ 9 CA ***(refd)***
United Plywood And Sawmill Ltd v. Lock Ngan Loi [1970] 1 LNS 164 ***(foll)***
B *Western Exacavating (ECC) Ltd v. Sharp [1978] 1 QB 761* ***(refd)***
William Jacks & Co (M) Sdn Bhd v. S Balasingam [1997] 3 CLJ 235 CA ***(refd)***
Wong Chee Hong v. Cathay Organisation (Malaysia) Sdn Bhd [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298 SC ***(foll)***
Woods v. WM Car Services [1981] ICR 666 ***(foll)***

C **Legislation referred to:**
Courts of Judicature Act 1964, s. 25
Industrial Relations Act 1967, ss. 20(3), 30(6)
Rules of the High Court 1980, O. 53

D *For the applicant - Chan Kok Keong (Norazali Nordin with him); M/s Chan & Assoc*
For the 2nd respondent - T Selvadoray; M/s T Selva & Co

Reported by Suresh Nathan

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JUDGMENT

VT Singham J:

F **[1]** By this application for judicial review dated 17 January 2006 (encl. 9), the applicant had applied for an order of *certiorari* to set aside or quash the award made by the Chairman of the Industrial Court, Ipoh on 20 May 2005 in favour of the second respondent/ employee. In this judgment, the applicant and the second
G respondent would be referred to as the 'company' and the 'employee' respectively.

[2] The award of the Industrial Court in favour of the employee is as follows:

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(i) Salary for the month of August 2001	=	RM2,000.00
(ii) Reimbursement for food allowance, petrol and medical fees	=	RM 513. 40
(iii) 24 months backwages of RM2000 x 24	=	RM48,000.00

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(iv) Compensation *in lieu* of reinstatement being one month salary for every completed year of service (RM2000 x 164/12 = 13 years 8 months)	=	RM27,333.00
Total	=	RM77,846.40

[3] The total award of RM77, 846.40 was ordered to be paid through the employee's solicitors within thirty (30) days from the date of service of this award on the company subject to any statutory deductions.

[4] Before this court proceeds to deliver its decision, it is only appropriate to list out in brief, the chronology of events which are not in dispute:

No.	Date	Particulars
1.	November 1987	*Employee* commenced employment as a Laboratory Assistant with the company.
2.	2 years later (November 1989)	Employee was promoted to Production Executive
3.	November 1991	Employee was promoted to post of Production Manager.
4.	1 November 1995	Employee left the employment
5.	16 November 1995	Employee rejoined service. Amongst the employee's duties were: (i) Promoting the marketing and sales of company's product (sauce). (ii) In charge of the production of sauce and the administration of workers employed in the production. (iii) Liaising with government department or agencies and suppliers pertaining to company's businesses.

6.	23 May 2001	(a) Employee was initially dismissed by a letter dated 23 May 2001 with immediate effect as Production Manager without assigning any reason.
		(b) Following a complaint to the Industrial Relations Department by the employee, he was reinstated *by consent through a Memorandum of Agreement* dated 30.6.2001 signed by the Manager of the Company Mr. Yee Choon Yew and the employee.
		(c) *By the terms of this Consent Agreement, the employee was reinstated to his original post as Production Manager without any loss of seniority together with all benefits received.*
		(d) The employee was to report for work on 2.7.2001
		(e) The Company agreed to pay to the employee the arrears of wages for the period of unemployment from 24.5.2001 until 1.7.2001.
7.	22 August 2001	Employee claimed he wasconstructively dismissed and sent a letter to the company to that effect.

[5] On 22 August 2001, the employee regarded himself as being constructively dismissed and sent a letter dated 22 August 2001 to that effect to the company. The complaints, *inter alia* of the employee for the constructive dismissed are as follows:

(i) Upon reporting for work on 2 July 2001 after the consent agreement, at about 7.45am, the employee could not locate his punch card. Upon requiring for the punch card, the manager accused him for not punching his card.

(ii) On the same day ie, on 2 July 2001, the manager offered to pay three (3) months wages if he tenders his resignation. Upon refusing to accept the offer, the Management instructed him to sit outside the main office until further instructions. At about 9.17am, he was then handed the punch card.

(iii) Denied the employee access to his office in the factory where he worked prior to his first dismissal on 23 May 2001.

(iv) Denied the employee from receiving incoming calls whether it was official or private.

(v) Rejected employee's application for annual leave on 28 July 2001 and 30 July 2001.

(vi) Prevented employee from getting lifts either in the company cars or in the staff private cars either to and from work or during lunch breaks.

(vii) Made the employee to sit only outside the main office (porch) without giving any work.

(viii) Threatened to call police to arrest him if it is found that there is evidence of the employee throwing company's newspaper into the cooker during the period prior to the first dismissal on 23 May 2001.

(ix) The place where the employee was made to sit outside the main office (porch) were badly infected with mosquitoes due to the presence of used tyres, used wooden panels, doors, old spare parts for lorries, dustbins and newspapers.

(x) Ordered not to enter the factory areas nor be seen talking to any staff in the factory.

(xi) The personal driver of Human Resources Manager was directed to guard the employee.

(xii) Rattan chair was replaced with plastic chair on 6 July 2001. Later table and chair were removed and given stool without backrest to sit.

(xiii) The employee suffered backaches due to long hours of sitting on the stool and had to be on medical leave for two (2) days.

(xiv) The employee who sat outside the main office (porch) was doing nothing and in full view of his colleagues, visitors and company suppliers which caused much embarrassment as he was still the Production Manager.

(xv) The employee was required to wait at the guard house each day until the arrival of the Top Management before he was allowed to go to the office.

(xvi) The employer assured the employee that a company car will be given to him before 7 July 2001. However, on 21 August 2001, on the pretext of giving a car to the employee, the employer made available to him an old diesel car which needed repair and a shell petrol card instead of a diesel card was given.

(xvii) The employee was accused of misappropriating the insurance premium payable to Fomema Sdn Bhd and a police report was lodged against the employee despite the insistence by the employee that he did not misappropriate the said premium. Later, police investigation revealed there was no case against the employee as another staff of Fomema Sdn Bhd had already admitted to misappropriating the said premium.

(xviii) The employee was told that his office will be renovated and will be used by the Managing Director and that a place will be allocated to him after the renovation. Later, *vide* a letter dated 21 August 2001, the employee was informed the renovation will be delayed and he could now occupy his office. When the employee came to his office on 22 August 2001, he found that the air conditioner which was relatively new and was working well previously was now not functioning. Upon enquiry, he was told that certain parts of the air conditioner were purposely removed a few days ago.

(xix) All these events caused anxiety, pressure and distress to the employee.

[6] As a result of the unbearable and unpleasant events as stated above, the employee had contended that it amounted to breach of the implied obligation of mutual trust and confidence which drove him out of the employment and destroyed the foundation of the contract. Hence, a repudiatory breach had occurred which went to the root of the contract and which showed the employer had no longer intended to be bound by its contract and the employee was unable to tolerate the oppression and victimisation which led to the employee walking out of the company on 22 August 2001 and treating himself as constructively

dismissed. The employee had also claimed that he was dismissed without just cause and excuse. He further contended that he had at all times discharged his duties diligently and had done so much to promote the business of the company.

[7] As a result of the complaints above, he claimed that he has suffered loss and damage and there was unfair labour practice. Consequently, he had applied to the Industrial Court to reinstate him to his former position as the Production Manager without any loss of wages, allowances, service seniority, privileges or benefits of any kind or in the alternative, that he had been constructively dismissed. The matter was referred to the Industrial Court by the Minister of Human Resources. However, the company had denied all the complaints of the employee and contested the claim at the Industrial Court on the ground that the employee left the employment voluntarily.

[8] Section 20(3) of the Industrial Relations Act 1967 states:

> (3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.

Pursuant to the reference under s. 20(3) of the Industrial Relations Act 1967 to the Industrial Court, the Chairman, Puan Choong Siew Khim of the Industrial Court, Ipoh on 20 May 2005 found that the employee had proved his claim of constructive dismissal and it was without just cause or excuse. However, she found that reinstatement was not the proper remedy. Instead, she awarded compensation in the sum of RM27,333 *in lieu* of reinstatement, backwages for 24 months based on his last drawn salary of RM2,000 per month, amounting to RM48,000, RM513.40 as food allowances, petrol and medical fees for the month of August 2001.

[9] On 9 January 2006, on the application of the company to stay the payment of the award to the employee as ordered by the Industrial Court, this court had ordered the award being the sum of RM77,846.40 to be paid into a Fixed Deposit Account in the name of both solicitors, namely Messrs Chan & Associates for the company and Messrs T. Selva & Co for the employee until the disposal of this judicial review application. (See s. 25 read together with para 1 of the Schedule of the Courts of Judicature Act 1964 and O. 53 of the Rules of High Court 1980).

Decision

[10] In this application, there are basically three (3) principle assertion for consideration: first, whether there was constructive dismissal; secondly, whether the break in the employment between 1 November 1995 till 15 November 1995 should be taken into account in awarding the compensation *in lieu* of reinstatement and if the compensation was excessive; thirdly, whether the employee was entitled to be awarded the sum of RM513.40 as reimbursement for food allowance, petrol and medical fees.

Constructive Dismissal

[11] The question whether there was a constructive dismissal as complained by the employee is one that must eminently be determined in the light of its own particular set of facts and there cannot be a definite or inflexible interpretation of law. On the facts and by its very nature in which the employee was treated and the conduct of the company towards the employee is so devastating, the consequent upon the employee was that its effect were so intolerable and unacceptable that it smacks of unjust and a calculated and deliberate attempt to exert undue and unreasonable pressure on the employee to leave the employment. Accordingly, that conduct would amount to constructive dismissal as correctly found by the learned Chairman of the Industrial Court. The learned Chairman had correctly directed her mind to the points of law that governs the case before her based on the materials placed before the court. By no stretch of the imagination could the conduct and treatment towards the employee as per the complaints could be considered as not justifying constructive dismissal or is committed outside the ambit of constructive dismissal. The acts and conduct of the company which were carried out over a continuous period of about two months since the employee was reinstated on 2 July 2001 was tainted with malice and done in such undue, undignified and degrading fashion against the employee that his reputation and dignity have been severely diminished and jeopardise to such an extent that the employee had no other choice but to have considered himself and constitute the conduct and treatment of the company as constructive dismissal without just cause or excuse as the mutual trust and confidence was not geminating at all. (See *Wong Chee Hong v. Cathay Organisation (Malaysia) Sdn Bhd* [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298 SC; *Lewis v. Motorworld Garages Ltd*

[1985] IRLR 465; *Bayer (M) Sdn Bhd v. Anwar bin Abd Rahim* [1994] ILR 473 at p. 477; *Wood v. WM Car Services* [1981] ILR 666; *Western Exacavating (E.C.C) Ltd v. Sharp* [1978] 1 QB 761)).

[12] This court is of the considered view that the treatment accorded towards the employee after the company had by consent agreed to reinstate him to his original position on 2 July 2001 without any loss of benefit or seniority was so downgrading of his position and deplorable that it cannot be anything but its effect judged reasonably and objectively must necessarily be constructive dismissal as no employee can be expected to put up or tolerate with it any longer. In fact it is an attitude inherent and a wrongful act without just cause and excuse. An employer is considered to act in bad faith if he acts dishonestly, in order to achieve his desired object other than that for which it believes the power has been given or acts maliciously, if it is out of personal animosity.

[13] Abuses by employers by unauthorised devise circumventing the armour of terminating an employee seem to be common phenomena by some employers to get rid of the employee by way of intimidation, harsh treatment or coercive process. Consequently, in the instant case, the employee found it as humiliating, distressful and damaging to his reputation caused by the said manner of treatment towards him. Accordingly, the employee under the circumstances asserted his right to treat himself as having been discharged or dismissed without just cause or excuse as the company had conducted themselves in a manner calculated to destroy seriously and damage the relationship of confidence and trust between the company and employee. (See *Lamb v. Evans* [1893] 1 Ch. 218 at p. 229; *Robinson v. Crompton Parkinson* [1978] IRLR 61; *Wood v. WM Car Services* [1981] ICR 666; *Ang Beng Teik v. Pan Global Textiles Bhd* [1996] 4 CLJ 313 CA).

Award Of Compensation

[14] As for the complaint of the applicant that the learned Chairman had erred in not taking into account the break in the employment from 1 November 1995 till 15 November 1995 (two weeks), this court is of the considered view that, that submission is not the correctly reflected when considering the facts and the findings of the learned Chairman. The learned Chairman having considered that the employee had left the employment on 1 November 1995 and rejoined on 16 November 1995 had expressly stated that she was not taking this lapse into account

due to its brevity and awarded compensation for the period of 13 years and 8 months ie, from the date the employee was employed in November 1987 till the time of the constructive dismissal. There was no sufficient evidence produced by the company that the employee was receiving income as alleged and the exact amount after his dismissal. Therefore, it is not correct to say that the learned Chairman had failed to take into account the break in the employment from 1 November 1995 till 15 November 1995 and this court finds that she had assessed the compensation on the materials placed before the court.

[15] By the Memorandum of Agreement dated 30 June 2001, which was signed at the Industrial Relations Department by both the Chairman of the company and the employee, it is expressly stated and mutually agreed that the company would reemploy the employee on his original position without any loss of seniority together with benefits which he had enjoyed and there was no new terms of employment. Further, the company had also agreed to pay arrears of wages from 24 May 2001 till 1 July 2001. All these concession and mutual agreement when taken cumulatively together with the findings of the learned Chairman for having awarded the compensation for 13 years and 8 months, this court finds that it did not exceed jurisdiction. Accordingly, the learned Chairman took into consideration the employee's employment for the period of 13 years and 8 months for the purpose of computing the compensation and objectively was justified and was explained. The learned Chairman therefore, had not erred in law or in fact or made any reviewable error or had acted in excess of or without jurisdiction or had failed to take into account the lapse notwithstanding the letter dated 12 July 2002 from the employer when she made the award. (See *Koperasi Serbaguna Sanya Sdn Bhd (Sabah) v. Dr James Alfred (Sabah) & Anor* [2000] 3 CLJ 758 CA).

[16] The assessment of the monetary award as compensation *in lieu* of reinstatement is a matter for the discretion of the Industrial Court which was exercised reasonably and granted in accordance with equity and good conscience based on the particular set of facts, the background facts, circumstances and substantive merits of the case. Unless the learned Chairman had acted in excess or without jurisdiction in exercising that discretion, this court in this judicial review application should not disturb that award. It is important to state at this stage that it is settled law that it is not

the function of this court to act as an appellate court or as a cloak of an appeal in disguise when hearing application for judicial review. (See *Harpers Trading (M) Sdn Bhd v. National Union of Commerce Workers* [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 SC; *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687 FC; *Ang Beng Teik v. Pan Global Textiles Bhd, Penang* [1996] 4 CLJ 313; *KFC Technical Services Sdn Bhd v. The Industrial Court of Malaysia & Anor* [1992] 1 CLJ 437; [1992] 2 CLJ (Rep) 634; *William Jacks & Co (M) Sdn Bhd v. S. Balasingam* [1997] 3 CLJ 235 CA and followed in *National Union of Plantations Workers v Kumpulan Jerai Sdn Bhd* [2002] AMR 1387; *Mak Weng Kit v. Reed Exhibitions Sdn Bhd* [2000] 5 CLJ 253 HC; *Quah Swee Koon v. Sime Darby Bhd* [2001] 1 CLJ 9; *Northumberland Compensation Appeal Tribunal Ex Parte Saw* [1952] 1 All ER 122 at p. 133).

[17] The assessment of monetary award or compensation *in lieu* of reinstatement is a matter of discretion for the Industrial Court which no doubt has to be exercised reasonably in light of the particular facts, circumstances, substantial merits of the case and of course, in accordance with equity, substantive merits and good conscience without regard to technicalities and procedure. (See s. 30(6) of the Industrial Relations Act 1967).

[18] On the facts in the instant case, the learned Chairman had exercised her discretion correctly and there is no justification to interfere with its discretion. Nevertheless, this does not mean that this court is helpless to interfere with the discretion exercised by the learned Chairman of the Industrial Court. The power of this court to interfere will arise whenever justice so required but this is not one of those cases which required this court to interfere with or vary the award of compensation as the learned Chairman did not transgress the principle of the rule of law. (See *Puhlhofer v. Hillingdon LBC* [1986] AC 484 at p. 518)

[19] This court finds that the award for compensation *in lieu* of reinstatement by the learned Chairman is not manifestly excessive or unreasonable when taking into account the background facts and substantive merits of the case to justify any interference by this court although it may appear to be generous but is not unreasonable. The learned Chairman had correctly found the employee had been constructively dismissed and the dismissal was without just cause or excuse upon considering all the issues most

carefully and thoroughly and she did not exceed statutory powers. (See *Western Excavating (ECC) Ltd v. Sharp* [1978] IRLR 27 followed in *Koperasi Serbaguna Sanya Sdn Bhd (Sabah) v. Dr James Alfred (Sabah) & Anor* [2000] 3 CLJ 758 (CA); [2001] 3 CLJ 541 (FC), *Phang Ah Chee (MW) v. Cheong Kwee Sang* [1985] 2 CLJ 211, *United Plywood & Sawmill Ltd v. Lock Ngan Loi* [1970] 2 MLJ 239; *Pahang Lim Seong Motor Ltd & Anor v. Cheong Swee Khai & Anor* [1970] 2 MLJ 237; *KFC Technical Services Sdn Bhd v. The Industrial Court of Malaysia & Anor* [1992] 1 CLJ 437; [1992] 2 CLJ (Rep) 634). In fact, both the findings are so interwoven that the finding of constructive dismissal must necessarily also lead to the finding that the dismissal was without just cause or excuse for the employee to succeed in the matter before the Industrial Court as correctly found by the learned Chairman. There is no justification for a 50% adjustment on the award as submitted by learned counsel for the company which if accepted would be arbitrary and without any justification.

[20] As for the award of RM513.40 being reimbursement for food allowance, petrol and medical fees, this court is of the considered view that the award was justified as the employee was entitled to receive the same during his employment. Accordingly, the learned Chairman had exercised her discretion correctly in making the award and there is no justification to interfere with the award.

[21] Having gone through the notes of evidence, together with the relevant documents and findings made by the learned Chairman of the Industrial Court and considering the written submissions of both parties and the authorities, this court is satisfied that there is no error or illegality or irrationality or any procedural impropriety on the findings made by the learned Chairman of the Industrial Court.

[22] This court wishes to observe that in order to be considered as a caring employer, the organization must recognise and in addition to giving monetary benefit, the skills, experience and efforts of the employee and value its employees as one of the most important resources which undoubtedly is a contributing factor to the success of the business in most of the companies and not to treat the employees in an uncivilized manner or discourteous behaviour.

[23] On the totality of the evidence and upon reviewing the manner in which the learned Chairman of the Industrial Court had made her decision, this court is unable to find any reviewable error or jurisdictional error or any material facts which had been missed or disregarded or misdirection or misapplication of the law to the facts to justify an interference by this court. Accordingly, the application for Judicial Review is dismissed with costs.

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